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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT
(Yuba)

THE PEOPLE,

Plaintiff and Respondent,

v.

ALVIN LEROY HUHN,

Defendant and Appellant.

C061403

(Super. Ct. No.
CRF08371)

On August 20, 2008, defendant Alvin Leroy Huhn pled no contest to driving under the influence with injury (Veh. Code, § 23153, subd. (a)). He entered his plea with the understanding that he could receive a sentence of three years in state prison, but that sentencing would be continued for six months, during which he could enter a Salvation Army residential rehabilitation program, and if he completed the program, he could argue that his participation constituted unusual circumstances justifying probation.

On January 28, 2009, defendant appeared in court with counsel who advised the trial court that defendant was not in

good standing with the rehabilitation program, and that if the court did not intend to sentence defendant to a maximum of 16 months he wished to withdraw his plea and to "exercise his rights under *Marsden* [*People v. Marsden* (1970) 2 Cal.3d 118]."

The trial court heard defendant's *Marsden* motion and appointed second counsel to determine if defendant had grounds to withdraw his plea.

On February 25, 2009, second counsel advised the trial court that he had found no grounds to justify withdrawing the plea. The court relieved second counsel, reappointed former counsel, and continued the matter for sentencing.

On March 16, 2009, the trial court denied probation and sentenced defendant to three years in state prison. The court also ordered defendant to pay a \$600 restitution fine (Pen. Code, § 1202.4); a \$600 restitution fine, suspended pending successful completion of parole (Pen. Code, § 1202.45); a \$20 court security fee (Pen. Code, § 1465.8); a \$30 conviction assessment fee (Gov. Code, § 70373); a DUI fine of \$3,800, including penalty assessments; and a victim restitution fee of \$6,345 (Pen. Code, § 1202.4, subd. (f)), plus 10 percent interest. Finally, the court informed defendant that the Department of Motor Vehicles would revoke his driver's license for four years (Veh. Code, § 13351.5).

According to the probation report, on June 5, 2008, defendant's car rear-ended a stopped car, seriously injuring the driver and a passenger. A blood sample taken from defendant tested positive for benzodiazepine and an opiate.

Defendant filed a timely notice of appeal.

We appointed counsel to represent defendant on appeal. Counsel filed an opening brief that sets forth the facts of the case and requests this court to review the record and determine whether there are any arguable issues on appeal. (*People v. Wende* (1979) 25 Cal.3d 346.) Defendant was advised by counsel of the right to file a supplemental brief within 30 days of the date of filing of the opening brief. More than 30 days have elapsed, and we have received no communication from defendant.

Having undertaken an examination of the entire record, we find no arguable error that would result in a disposition more favorable to defendant.

DISPOSITION

The judgment is affirmed.

We concur: BLEASE, Acting P. J.
HULL, J.
ROBIE, J.